

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 22, 2013

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on February 22, 2013. Members present were Chairman Barry Stumbo, Janice Meyer, James Griggs, Joseph Smith, Kathryn Moore and Thomas Glover. Member Noel White was absent. Others present were Jim Gallimore, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Mike Sanner, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Saltee and Wanda Howard.

Swearing of Witnesses – Prior to sounding the agenda, Chairman Stumbo asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. He administered the oath at this time.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the July 20, 2012 and October 26, 2012 meetings would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously (White absent) to approve the minutes of the October 26, 2012 meeting.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (White absent) to approve the minutes of the July 20, 2012 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2013-6: EL POTRILLO MEXICAN BAR & GRILL** - appeals for a conditional use permit to offer live entertainment and dancing accessory to a restaurant/bar & grill in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive. (Council District 11)

The Staff Recommended: Disapproval, for the following reasons:

1. Granting the requested conditional use has significant potential to adversely impact a well established residential area located as close as 30' from the building to be used for live entertainment and dancing.
2. The proposed late hours of operation, combined with the changing character of this use from a restaurant to a night club on the weekends has a significant potential to be a disruption to the neighborhood, and therefore, is inappropriate at this location.

Mr. Emmons stated that the staff received an e-mail on February 2nd from the appellant requesting a withdrawal of the subject appeal. Therefore, no action from the Board was needed other than acceptance of the request for withdrawal, which the Chairman did.

2. **No Discussion Items** - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2013-11: BALL HOMES, LLC** - appeals for a variance to reduce the required 25-foot distance from the floodplain to 13 feet in order to construct a duplex in an Expansion Area Residential (EAR-1) zone, on property located at 3865 & 3869 Castlebridge Lane. (Council District 7)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed duplex is about 50' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #09-04-8336R; and all of the necessary floodplain improvements between Hays Boulevard downstream to the regional detention basin are complete and functioning properly, as per the approved CLOMR.
2. The proposed structures are not located in the regulatory floodplain.
3. Upon completion of all of the stormwater improvements within the 500+ acre Gess development, and approval by FEMA of the final Letter of Map Revision (LOMR), this variance would no longer be necessary. Thus, there would be no circumvention of the Zoning Ordinance.
4. Strict application of the Zoning Ordinance would create an unnecessary hardship for the appellant, since a client has chosen these lots and the issuance of the LOMR appears to be some time in the future.
5. The possibility of this variance is noted on the current Development Plan approved for this location. It is only the timing of the proposed construction that necessitates the variance. Once the CLOMR becomes a LOMR in the future, the need for the variance will no longer be applicable.

This recommendation is made subject to the following conditions:

1. This development of the subject property shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection and any other applicable Division of the Urban County Government prior to any construction activity on the subject site.

Chairman Stumbo asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Rena Wiseman, attorney, was present on the appellant's behalf, along with Mr. Rory Kahly, E A Partners. Ms. Wiseman indicated that they had reviewed the recommended conditions and would abide by them.

Since there were no questions or comments from the Board, the Chairman called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (White absent) to approve **V-2013-11: BALL HOMES, LLC** (a variance to reduce the required 25-foot distance from the floodplain to 13 feet in order to construct a duplex in an Expansion Area Residential [EAR-1] zone, on property located at 3865 and 3869 Castlebridge Lane) for the reasons recommended by the staff and subject to the conditions recommended by the staff.

- b. **C-2013-9: R.F.I. PROPERTIES, LLC** - appeals for a conditional use permit to establish an indoor fitness facility in a Light Industrial (I-1) zone, at 2426 Palumbo Drive. (Council District 7)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site is well suited for a small fitness center, where the peak hours of operation will be in the early mornings and evenings after normal business hours, which will reduce the potential for lack of parking availability.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The proposed athletic club facility (private gym) will be operated in accordance with the

- submitted application and site plan.
2. The applicant shall obtain a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection prior to operating an athletic club facility at this location.

Chairman Stumbo asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Myke Robbins, with Foster-Roland, Inc., was present representing the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Mr. Emmons informed the Board that this property did require a notice sign, which was posted by the staff.

Since there were no questions or comments from the Board, the Chairman called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (White absent) to approve **C-2013-9: R.F.I. PROPERTIES, LLC** (a conditional use permit to establish an indoor fitness facility in a Light Industrial [I-1] zone at 2426 Palumbo Drive) as recommended by staff and subject to the two conditions outlined by staff.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

None Remaining

- D. **Conditional Use Appeals**

None Remaining

- E. **Administrative Review**

None Remaining

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There were none.
- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Emmons said that there would be an APA lecture held in the Division of Planning conference room on Wednesday, March 13, entitled “Environmental Systems, Assessment and Carrying Capacity” that will provide 1.5 hours of training credits. The time of the lecture is from 4:00 p.m. until 5:30 p.m.

Ms. Meyer asked whether it was necessary to physically attend the APA training sessions, or if the DVD could be checked out for viewing purposes. Mr. Emmons responded that recordings of most, if not all, of the training lectures are available in the Division of Planning office; and that Barbara Rackers was the contact person for setting up a viewing session.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date will be March 29, 2013.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 1:09 p.m.

Barry Stumbo, Chairman

James Griggs, Secretary